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Supreme Court, U.S.
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No. 99-1751

In The

Supreme Court of the United States

OCEANSIDE-MISSION ASSOCIATES,
a California limited partnership,

Petitioner,

v.

CITY OF OCEANSIDE, a public body,

Respondent.

On Petition For A Writ Of Certiorari To The California Court Of Appeal Fourth District, Division One

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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REASONS FOR DENYING THE WRIT

The questions presented by the Petitioner all bear on one issue: Whether under the facts of the case the California state courts properly determined, and then upheld, the dedication requirement. More specifically, Petitioner contends the facts of the case do not support the constitutionality of the dedication requirement under the standards set forth by this Court in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Asserted factual error by the state court should not be reviewed by this Court. In any event, the facts of the case support the state court's determination that the dedication was constitutionally valid.

This is not a case where the California state courts have failed or refused to follow the decisions of this Court. The parties agreed that *Nollan* and *Dolan* presented the applicable standard. Both the trial court and the State Court of Appeal applied the tests set forth in these cases in assessing the constitutionality of the dedication. Thus, the California state courts have not decided the matter in a way that conflicts with the decisions of this Court or any other state court.

I.

THE CALIFORNIA COURT OF APPEAL'S RULING DOES NOT CONFLICT WITH THE DECISIONS OF THIS COURT OR ANY OTHER APPLICABLE COURT

Rule 10 of this Court sets forth the standards by which the Court will decide whether or not to exercise its discretion to grant review on a writ of certiorari. With

regard to state court rulings, the case must be one in which the state court has decided an important federal question in a way that conflicts with relevant decisions of this Court, or with the decision of another state court of last resort or a United States Court of Appeals. See Rule 10(b) and (c).

In this case the California Court of Appeal did apply the relevant decisions of this Court, i.e., *Nollan* and *Dolan*, in assessing the constitutionality of the dedication. The court's opinion correctly identifies the *Nollan* "essential nexus" test and the *Dolan* "rough proportionality" test as the relevant standards. The opinion references particular facts of the case as they relate to these standards in affirming the trial court's determination that the dedication requirement was constitutionally valid. (See Petition, Appendix A, pages A6-A10.)

Petitioner does not contend the California Court of Appeal's ruling applied the wrong decisions of this Court or incorrectly construed the *Nollan* and *Dolan* standards. Instead, the Petition contends the California courts should have decided the matter differently under the facts of the case. Where, as here, there is no conflict with the relevant decisions of this Court, review should be denied.

As a reason for granting the Petition, Petitioner contends the California state courts have not applied the *Nollan* and *Dolan* standards "objectively and dispassionately." Petitioner compares this case to the court's decision in *Goss v. City of Little Rock, Arkansas*, 151 F.3d 861 (8th Cir. 1998), as a case where the Arkansas court

was more "objective" and "even-handed." (Petition, page 24.) However, there is no conflict between the two cases.

In *Goss*, the United States District Court for the Eastern District of Arkansas determined the City of Little Rock satisfied *Nollan*'s "essential nexus" requirement because the dedication could alleviate problems associated with increased traffic if the property were rezoned as commercial. The Eighth Circuit Court of Appeal affirmed the district court's conclusion was correct. *Id.* at 863. Similarly, here the California Court of Appeal affirmed *Nollan*'s "essential nexus" had been met based on evidence of a direct link between the projected traffic impacts of commercially developing Petitioner's property and the dedication of right of way for the highway as a condition of development. (See Petition, Appendix A, page A7.) Contrary to Petitioner's assertion, *Goss* and the instant case are actually in accord with regard to the *Nollan* standard.

Unlike the instant case, however, in *Goss* the district court found *Dolan*'s standard had not been met. This was based on different facts and evidence. In *Goss*, the district court found that the City of Little Rock did not meet its burden of proving that the dedication was roughly proportionate to the impact that the proposed rezoning would have on traffic. The district court found that Little Rock's assessment was too speculative because it was based on traffic that could "conceivably" be generated in the future. Little Rock presented an opinion without supporting evidence. The district court concluded this failed to comply with *Dolan*'s requirement that the government make an individualized determination that the required dedication is related both in nature and extent to the

impact of the proposed development. *Id.* at 863. By contrast, here the California court specifically concluded that the City of Oceanside made an individualized determination. The court cited Petitioner's own traffic studies prepared when it sought to have the property rezoned commercial. These studies referenced specific volumes of increased traffic which the City used to assess the significance of the impact. (See Petition, Appendix A, pages A8-A9.) The City of Oceanside did what the City of Little Rock did not.

In *Goss*, the City of Little Rock did not dispute the district court's conclusion that it failed to prove rough proportionality. Instead, it contended *Dolan* was irrelevant where it had a legitimate reason for demanding the dedication. *Id.* at 863. The Eighth Circuit correctly rejected this argument. Unlike the City of Little Rock, the City of Oceanside agreed that the *Dolan* standard was necessary to establish the constitutionality of the dedication. The City of Oceanside evidenced rough proportionality.

In summary, the California Court of Appeal's ruling here does not conflict with the decisions of this Court or any other applicable court. Therefore, review should be denied.

II.

THE WRIT SHOULD BE DENIED WHERE THE ASSERTED ERROR CONSISTS OF ERRONEOUS FACTUAL FINDINGS

Rule 10 of this Court states in relevant part:

> A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

The asserted error here falls squarely within this "rarely granted" category of the rule. The principal purpose for which this Court uses certiorari jurisdiction is to resolve conflicts among the circuit courts of appeals and state courts concerning the meaning of provisions of federal law. *Braxton v. United States*, 500 U.S. 344 (1991). Reconsidering the factual merits of state court actions is not the Court's function on certiorari.

Perhaps in the most egregious circumstances, this Court will consider asserted erroneous factual findings. For example, where the state court's determination appears on its face to be a sham or a fraud. This is not such a case. The California state courts applied this Court's constitutional standards set forth in *Nollan* and *Dolan* in ruling on the dedication. Specific facts and evidence were presented by Respondent in proving the matter. The specific facts and evidence were cited by the Court of Appeal in its decision.

This case demonstrates that the California courts are properly applying federal law, and not the contrary. There are no issues that warrant this Court's review.

CONCLUSION

Based on the foregoing, Respondent requests that this Court deny the Petition.

Respectfully submitted,

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